IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 173 & 173-A of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

GUSTAV ZEPLICHAL

Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondents No. 1-2

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these references at the instance of the revenue, the following common question has been referred for the opinion of this Court in case of the respondent-assessees, two in number, for assessment year

1983-84 :-

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the living allowance paid to the assessee did not constitute perquisite within the meaning of Sec.17(2) of the Act ?"

2. We may point out that the amount involved in Income-tax Reference No. 173 of 1992 is Rs.16,212/-. The amount involved in Income-tax Reference No. 173-A of 1992 is Rs.17,556/-.

3. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessees.

4. The Tribunal held in both the cases that the living allowance paid to the respondent-assessees did not constitute perquisite within the meaning of Section 17(2) of the Income-tax Act, 1961. The Tribunal based its decision on the decision of this Court in the case of SG Pignstale, 124 ITR 391. The said decision of this Court also came to be followed by this Court in 244 ITR 93. We, therefore, see no reason not to follow the aforesaid decisions.

5. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6. The references accordingly stand disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-